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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1988

Addendum

AFGHANISTAN

[21 January 1992]

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I. BASIC INFORMATION ON THE REPUBLIC OF AFGHANISTAN

1. The Republic of Afghanistan lies in the heart of Asia. The area of Afghanistan is around 652,225 km^2 which is equal to 65.2 million hectares. Out of this, 37.9 million hectares is under agricultural and pastoral cultivation, 1.9 million hectares under forest and 25.4 million hectares is mountainous land. The country is, in the main a highland lying mostly at an altitude of 1,300 m or more. The Hindu mountains, extending from the north-east, divide the country into two main geographical areas; the valleys of the north which are flat and fertile, and the heavily forested rocky southern sector which is rich in timber.

2. Based on provisional data, the total population of Afghanistan is estimated at approximately 16 million. Of this, 13.6 million or 85 per cent is a settled population. The nomadic population is estimated at 2.4 million and accounts for 15 per cent of the total population. Around 15.8 per cent of the population live in urban centres, of which the city of Kabul alone accounts for 47.8 per cent. In all, about 85 per cent of the population, including a considerable number of Kuchies (Nomads) live in rural areas.

3. The decade of the 1980s has been one of the most difficult periods in the history of the Republic of Afghanistan. The country's land-locked nature, rugged and mountainous terrain, large desert areas, limited cultivated land, shortage of water resources and scattered, often isolated human settlements, make economic development difficult and costly. The problem has been compounded by the long and tragic conflict which has produced unparalleled human suffering and immeasurable social and economic dislocation for a large part of the rural population. The protracted conflict has led to large-scale destruction of the socio-economic and political infrastructure of the country. Despite all these difficulties the Government of the Republic of Afghanistan spares no efforts in trying to fulfil its obligations regarding international conventions and other human rights instruments.

Law on the organization and authority of law courts in the Republic of Afghanistan

4. The general provisions of the law or the organization and authority of law courts are the following:

Article 1

This law was legislated in accordance with the provisions of article 116 of the Constitution of the Republic of Afghanistan with a view to organizing matters related to the structure, composition and powers of the law courts in the Republic of Afghanistan.

Article 2

1. The Judiciary is an independent organ of the State and is composed of the following courts:

(i) The Supreme Court;

(ii) The Courts of Appeal;

(iii) The High Courts;

(iv) The Primary Courts.

2. The Supreme Court is authorized to establish, when necessary, special and mobile courts.

Article 3

1. These courts are empowered to process all cases in which real persons or legal entities, including the State, appear as plaintiff or defendant according to the provisions of law.

2. The courts are empowered to take up the following cases:

(i) Those stemming from criminal offence;

(ii) Civil or commercial cases;

(iii) Other cases submitted to the court according to the provisions of law.

Article 4

Cases are processed in the courts on a collective basis as follows:

(i) In the initial stage by three judges, if possible, or fewer if three are unavailable;

(ii) In the appeal stage, by three judges;

(iii) Cases pertaining to administration, labour and workers;

(iv) In the cassation (final) stage by three or more than three judges.

Article 5

Cases are processed in the law courts on a collective basis as follows:

(i) In the primary stage by three judges, or fewer if less than three are available;

(ii) In the appeal stage, by three judges;

(iii) In the probation stage, by three judges or more.

Article 6

1. The accused is entitle to be defended by his defence attorney or himself.

2. A department of legal aid shall be established within the framework of the Supreme Court to help anyone who cannot afford to hire a defence attorney. The organization, powers and operations of the Defence Office shall be determined by special regulations prepared by the High Council of the Supreme Court.

Article 7

In civil, commercial and administrative cases etc., both real persons and legal entities are entitled to hire defence attorneys according to provisions of law.

Article 8

No court can refuse to issue verdicts on cases which have already been processed. A decision must be taken on each case coming before the courts.

Article 9

According to the law, the parties to any dispute are entitled to appeal to a higher court about lower court verdicts. The final verdicts are exceptions to this rule.

Article 10

During processing if the court discovers that the law has been violated, it shall inform the Office of the Attorney General accordingly.

Article 11

Judges cannot take up membership of a political party as long as they are in the service of the judiciary.

5. The articles concerning the organization of the Supreme Court, contained in Part One of the law concerning the Organization and Authority of Law Courts, are the following:

Article 12

The Supreme Court is the highest judicial body of the State, heading a unified judicial system and composed of the following:

(a) The High Council;

(b) The Panel for General Criminal Cases;

(c) The Panel for Public Security Cases;

(d) The Panel for Civil Cases;

(e) The Panel for the Armed Forces.

Article 13

The High Council of the Supreme Court consists of the following:

(i) The Chief Justice, as chairman;

(ii) The deputies to the Chief Justice, as vice-chairmen;

(iii) The heads of various Supreme Court tribunals, as members;

(iv) The head of the Supreme Court secretariat, who is also a member of the Supreme Court, as secretary.

Article 14

The Panel for General Criminal Cases is composed of the following:

(i) The Chamber for General Criminal Cases;

(ii) The Court for Impeachment of Judges and Disputes Over Competence of Courts.

Article 15

The Panel for Cases of Public Security is composed of the following:

(a) The Authority concerned with Public Security;

(b) The Chamber for Offences Against Internal and External Security.

Article 16

The Panel for Civil Cases is composed of the following:

(a) The Civil and Public Rights Chamber;

(b) The Commercial Chamber.

Article 17

The Panel for the Armed Forces is composed of the following:

(a) The Chamber for Offences of Officers and Junior Cadets;

(b) The Chamber for Offences of Soldiers.

Article 18

Each panel meets under the chairmanship of a deputy chief justice and each tribunal under a Supreme Court member.

(i) If there is no quorum at a panel or tribunal meeting, the Chief Justice is entitled to assign one or more members of the Supreme Court to complete it.

(ii) Should a member of the Supreme Court be assigned to a panel or tribunal meeting in the absence of the tribunal chairman, the former shall have the duties and powers of the tribunal chairman.

(iii) If a member of the Supreme Court is assigned to a panel or tribunal meeting, in the absence of the head of the tribunal, as such a head, he shall be entitled to assume the powers and duties of the head of tribunal.

(iv) The Chief Justice is entitled, if necessary, to assign members of one tribunal to another, temporarily.

II. INFORMATION OF A GENERAL NATURE

6. The Republic of Afghanistan, as a contracting party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, has continuously and undeviatingly acted for the implementation of the Convention adopted by the General Assembly on 10 December 1984, and has taken efective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment.

7. In article 42 of the Constitution of the Republic of Afghanistan of May 1990 the values of article 2 of the Convention have been taken into consideration. Article 42 of the Constitution reads:

> "In the Republic of Afghanistan, punishment incompatible with human dignity, torture and excruciation are prohibited. Obtaining confession, testimony or statement from an accused or any other person by compulsion or threat is prohibited. Statement or testimony taken from an accused or other person by means of compulsion shall not be valid.
>
> "A public servant who tortures an accused or any other person for obtaining statements, testimony or confession, or who issues orders for torture, shall be punished in accordance with the law. Acting on the orders of superiors in the commission of unlawful deeds cannot be the ground for the plea of innocence."

8. Pursuant to the provisions embodied in the Constitution of the Republic of Afghanistan, its Penal Code and other legislative documents contain the provisions referred to below.

9. Article 4, item 2, of the Penal Code of the Republic of Afghanistan does not allow punishment which is against human dignity. Article 78 of the amendment to the Penal Code does not consider valid confessions, obtained from the accused or other persons by means of compulsion. The legislation of the Republic of Afghanistan totally prohibites the use of chains and other similar items.

10. Torture is regarded as a crime not only in accordance with article 42 of the Constitution, but also with the provisions of the Penal Code of the Republic of Afghanistan and calls for punishment. For instance, article 275 of the Penal Code stipulates that if a public servant tortures an accused person for the purpose of obtaining a confession or issues orders for torture,

he will be sentenced to long-term imprisonment. If an accused person is killed as a result of torture, the perpetrator will be subjected to a criminal penalty. In article 278 of the Penal Code, other violent or rude acts of a public servant which cause physical and moral suffering to accused persons, are also considered crimes. This article states that if a public servant treats a person harshly thereby causing pain or degradation, the perpetrator will be sentenced to up to two years' imprisonment or a cash penalty not exceeding 24,000 Afghanis. In accordance with the provisions of articles 29, 30 and 31, of the Penal Code, punishment will also be meted out to the initiators of the crime (arts. 275 and 278 of the Penal Code) and the accomplices of such crimes (arts. 39 and 41 of the Penal Code).

11. Disciplinary and correctional measures against prisoners, and the manner of their implementation have special provisions in legislative documents. Prison personnel are neither permitted to subject prisoners to torture, persecution, or inhuman or bad treatment, nor to put them to compulsory work. In general, prison personnel do not have the right to chastise, beat or insult prisoners, or to threaten their human dignity. The perpetrators of such actions are punishable pursuant to the provisions of the law to the extent that they have inflicted physical and moral pain on the victim.

12. In accordance with the Convention against Torture, each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be valid. This principle has been taken into consideration in the law of the Republic of Afghanistan. For instance, article 42 of the Constitution and article 78 of the Penal Code provides that any statement, testimony or confession obtained by means of complusion or threat is not valid.

13. The Republic of Afghanistan has undertaken to refrain form cruel, inhuman or degrading punishment in any territory within its jurisdiction. This principle of protecting human dignity is reflected in the Penal Code of Afghanistan which does not permit cruel, inhuman or degrading treatment or punishment. For example, according to article 38 of the Penal Code, a public official who obliges a witness to give a false testimony is subject to punishment. Similarly, if one person forces another to give a false testimony, he will be subjected to punishment, in accordance with the provisions of articles 423 and 434.

14. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person is alleged to have committed any offence referred to in article 4 of the Convention is present shall take him into custody or take other legal measures to ensure his presence.

15. This principle has been taken into account in articles 10 and 15 of the law on detention and investigation of crimes. This principle is taken into account by the Attorney General on the legality of the correct implementation of the law when a person who has alleged to have committed any acts of torture is taken into custody.

16. In accordance with the Convention against Torture, each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and others who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. In the Republic of Afghanistan, the grave consequences of torture have been explained and taught at institutions of higher learning and on-the-job training courses for State employees, including civilians and the military.

17. In the criminal law of the Republic of Afghanistan, the methods and practices of interrogation concerning crimes leave no room for torture because in accordance with the Penal Code resorting to torture is a punishable crime. Under the Penal Code of the Republic of Afghanistan, a public official is duty bound to conduct criminal investigations promptly and objectively.

18. In the Republic of Afghanistan, the investigation of an offence must begin within 24 hours of its detection and should terminate within two months. Of course, for the investigation of complicated crimes which require more work, further time is allocated on an exceptional basis. Through the implementation of these provisions, the objective of the Convention against Torture on carrying out prompt and impartial investigations can be fulfilled.

19. Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainants and witnesses are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.

20. The Constitution of the Republic of Afghanistan, in its article 51, states:

> "Citizens of the Republic of Afghanistan enjoy the right to petition, criticize and make suggestions, either individually or collectively. State organs, social organizations and responsible officials are bound to consider the petitions, criticism and proposals and take necessary actions in regard to them within the time prescribed by law. Surveillance for criticism is forbidden."

The time and the method for dealing with complaints, proposals and suggestions has been established in law.

21. In accordance with the provisions of article 17 of the Penal Code, the judicial personnel are bound to start the investigation as soon as they receive information about acts of crime. Likewise, in accordance with article 7 of the Law on Detection and Investigation of Crime, the complainant's written or oral notice can lead to a criminal claim against the accused person and to have his case promptly, comprehensively and impartially examined by the competent authorities. The laws of the Republic of Afghanistan ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

22. In accordance with the Convention against Torture, each State party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

23. This principle has been taken into account in article 46 of the Constitution, which reads as follows:

> "Citizens of the Republic of Afghanistan who, in the performance of their duties, suffer unlawful damage by State organs, social organizations and responsible officials, are entitled to compensation, conditions and procedures which shall be regulated by law."

Similarly, in accordance with article 6, item 2 of the Penal Code, a person who has damaged public property is subject to pay indemnity.

24. Based on the provisions of the said article of the Penal Code, the cases of indemnity for victims of torture, all persons concerned in each stage of investigation and trial shall be protected by the Penal Code. The bereaved of someone who has died as a result of torture have the right to present a claim of intentional murder against the person concerned. In accordance with the law of the Republic of Afghanistan the victims of torture are entitled to compensation.

25. The courts of public security, of the armed forces and of national security have been authorized to verify each case, the place of its perpetration and the perpetrator of the charge. Within their jurisdiction, the said courts will subject the offender to punishment, with complete impartiality, due account being given to the principle of equal rights of citizens before the law. Any damage incurred from the offence will be based on provisions in the Penal Code.

III. INFORMATION RELATING TO THE ARTICLES IN PART I OF THE CONVENTION

26. The following information relates to the manner in which Afghan legislation secures the implementation of articles 2 to 16 of the Convention. The overall legal framework of the State of Afghan is established by the Constitution, the highest law in the Republic. Afghan legislation has always kept abreast of developments in human rights and conventions, convenants, declarations and other international instruments on human rights have been reflected in the Constitution and laws.

27. Article 145 of the Constitution stipulates:

> "International treaties previously entered into by the Republic of Afghanistan and Conventions joined by it, if found repugnant to the provisions of the laws of the Republic of Afghanistan shall have ascendancy."

It is appropriate to mention that Afghanistan, in keeping with its traditional international policy, has signed and ratified the vast majority of human rights instruments established by the United Nations. The Republic of Afghanistan, as a contracting State to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, has continuously acted for the implementation of the Convention and has taken effective measures to prevent acts of torture. To this end it has launched a nation-wide information campaign and has published the Convention in the "Official Gazette", No. 701, dated 5 October 1985. Article 120 of the Constitution states:

> ""High supervision over the implementation and uniform observance of laws shall be undertaken by the Attorney General and the Attorney subordinate to him."

Article 2

28. Article 42 of the Constitution stipulates:

> "In the Republic of Afghanistan punishment incompatible with human dignity, torture and excruciation are prohibited. Obtaining confession, testimony or statement from an accused or any other person by compulsion or threat is prohibited. Statements or testimony taken from an accused or other person by means of compulsion shall not be valid."

The Penal Code and the Code of Criminal Procedure exist to ensure the application of these provisions of the Constitution. Article 78 of the amendment to the Penal Code provides that the confessions obtained from the accused or another person by means of compulsion are not considered valid.

Article 3

29. In accordance with article 3 of the Convention, no State party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. This principle has been taken into account in articles 34 and 35 of the Constitution of the Republic of Afghanistan. Article 34 of the Constitution states: "No citizens of the Republic of Afghanistan shall be exiled inside or outside the country". Article 35 specifies: "No citizen of the Republic of Afghanistan shall be extradited to a foreign State".

Article 4

30. The introductory part of this report mentions the various provisions outlawing the practice of torture and the penalties applicable to public officials responsible for its perpetration. The provision which comes closest to the definition of "torture" provided in the Convention is contained in article 275, item 1 of the Penal Code, which stipulates that if a public official tortures an accused person for the purpose of obtaining a confession or issues orders for torture, the official can be sentenced to long-term imprisonment. If the accused is killed as a result of torture, the perpetrator is guilty of a crime. In accordance with the provisions of

articles 29 to 31 of the Penal Code, not only the initiators of the crime stipulated in articles 275 and 278 of the Penal Code, but also the accomplices shall be punished. Section 5, paragraph 4, of the Penal Code describes the punishment applicable to any participant in a criminal offence and section 6 of the Penal Code stipulates the provisions governing the penal responsibilities of the offender.

Article 5

31. The principle of the territoriality of the law is enshrined in section 2 of the Penal Code of the Republic of Afghanistan. In accordance with this principle of territoriality, the Penal Code is applicable to all crimes committed on the territory of the Republic of Afghanistan. The issue of the liability of foreigners entitled to immunity from the criminal jurisdiction of the Republic of Afghanistan is dealt with in accordance with the norms of international law which Afghanistan has adopted.

32. The Penal Code is applicable to Afghan citizens for crimes they have committed abroad. However, Afghan citizens cannot be extradited to another State for trial or punishment in that State. The Penal Code is also applicable to aliens who have committed general crimes abroad which affect the interests of the Republic of Afghanistan or those of Afghan citizens (Penal Code, section 2).

Article 6

33. This article has been taken into account in articles 10 and 12 of the Law on Detention and Investigation of Crimes, which stipulate that a person who is alleged to have committed any acts of torture shall be taken into custody. Were cases involving allegations of torture to arise, the police would follow the normal procedure of investigating an alleged offence. All possible documentary evidence would be collected. The victim and any witnesses would be interviewed and statements taken. After all available evidence had been collected, the persons suspected of committing the offence would be interviewed or a warrant for their arrest issued. After interview and arrest, the person might be charged with an offence. He or she would then be remanded either in custody or on bail depending on the circumstances of the case.

34. In the Republic of Afghanistan, the investigation of an offence must begin within 24 hours of its detection and should terminate in two months. Of course, for the investigation of complicated crimes which require more work further time is allocated on an exceptional basis.

35. The Republic of Afghanistan is a party to the 1963 Vienna Convention on Consular Relations. Article 36 of that Convention requires a State which is holding in detention a national of another State to inform, if the detainee wishes, the detainee's consular post of the sending State without delay about the person's detention, and must permit visits by and communication with consular officers.

Article 7

36. The provision contained in article 7 is reflected in article 122 of the Penal Code of the Republic of Afghanistan, which stipulates that the prosecutor is duty-bound to prosecute all criminal offences and requires a prosecution to be pursued. As discussed above, acts of torture are prohibited under the Constitution of the Republic of Afghanistan.

37. In Afghanistan, all persons are equal before the courts. Article 111 of the Constitution stipulates:

> "The courts shall be independent in their judgement and shall submit only to the law. Trial and verdict by courts shall be based on the principle of equality of parties before the law and the court."

The procedural rights of accused persons are set forth in the Constitution and criminal legislation of Afghanistan. These instruments specify extensive arrangements to protect the accused person's right to a defence, his right to communicate with his defence counsel, his relatives, and representatives of the State of which he is a national, as well as other guarantees that the trial will be fair and impartial (arts. 79-81 of the code of penal procedure). Article 113 of the Constitution stipulates:

> "Trial in the courts of the Republic of Afghanistan shall be held openly. The conditions under which cases are to be conducted in closed trials shall be determined by law. The verdict of the court shall be pronounced openly in all circumstances."

The code of criminal procedure and the agreements on judicial assistance in connection with criminal proceedings provide the necessary guarantees for fair treatment at all stages of such proceedings.

Articles 8 and 9

38. Nothing in the internal legislation of the Republic of Afghanistan prevents the implementation of the obligations resulting from articles 8 and 9 of the Convention.

Article 10

39. In the Republic of Afghanistan the provisions of article 10 of the Convention have been taken into account in the teaching and training of law enforcement personnel, civil or military, medical personnel and public officials, at institutions of higher learning and vocational training and in training courses, legal information and lectures of lawyers. Law enforcement personnel receive adequate education on this subject during their studies at civil and military schools and their superiors seek to advance their knowledge afterwards. The Penal Code and regulations covering the role and activities of these bodies deal not only with torture, but also provide that the human dignity of the accused and of the sentenced person or other persons involved in criminal proceedings should be respected as well.

Article 11

40. All rules and practices regarding the custody and treatment of persons in detention, including their interrogation, where applicable, are subject to ongoing review in all Afghanistan jurisdictions. Article 120 of the Constitution stipulates that high supervision over the implementation and uniform observance of laws ... shall be undertaken by the Attorney General and the Attorney subordinate to him.

Article 12

41. As mentioned above, if acts amounting to torture were to be committed, they would be offences under the criminal law and so would be investigated and prosecuted as any other criminal offence. Public criminal proceedings are begun through an initiating order which may be based on an investigation, a petition by a public prosecutor, a complaint or accusation by an individual, a police report or inquiries or instructions from a higher administrative authority. Unjustified delay in the administration of justice is punishable under the law. In the past several years only three cases of serious forms of torture have been reported. The perpetrators were submitted to law for punishment.

Article 13

42. Article 51 of the Constitution of the Republic of Afghanistan establishes the right of citizens to address complaints or petitions to the authorities and to receive a reply from them within a reasonable time. Article 51 reads:

> "Citizens of the Republic of Afghanistan enjoy the right to petition, criticize and make suggestions, either individually or collectively. State organs, social organizations and responsible officials are bound to consider the petitions, criticisms and proposals and take necessary actions in regard to them within the time prescribed by law."

Other relevant laws and procedures stipulate periods of time within which matters must be cleared up or settled by administration officials.

Article 14

43. As already stated in this report, the Afghanistan legal system provides for compensation for damage caused to victims of unlawful acts. The right to just and adequate compensation within the meaning of article 14 of the Convention is provided for in article 6, item 2 of the Penal Code on the responsibility of the State for damage caused by a decision of a State body or by its incorrect official action. Article 46 of the Constitution stipulates as follows:

> "Citizens of the Republic of Afghanistan who suffer in the performance of their duties, unlawful damage by State organs, social organizations and responsible officials are entitled to compensation, conditions and procedures of which shall be regulated by law."

Article 15

44. Article 4, item 2 of the Penal Code of the Republic of Afghanistan forbids the use of violence, drugs and techniques or methods of any kind which prevent an individual from giving evidence freely and voluntarily, either during trial or during investigation. It also provides that any officials, employees or police officers who breach this rule shall be liable to criminal punishment. In accordance with article 78 of the amendment to the Penal Code confessions obtained from the accused or another person by means of compulsion are not considered valid.

Article 16

45. The legal system of Afghanistan and its implementation in practice are fully oriented towards protection against all other cases of cruel, inhuman or degrading treatment or punishment which do not fall under the definition of torture contained in article 1 of the Convention. The provisions applying in such cases are similar to those referred to in respect of the relevant articles on torture.